

1 [Counsel listed on signature page.]

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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 SAN FRANCISCO DIVISION

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10 IN RE DITROPAN XL ANTITRUST  
11 LITIGATION

12 MDL No. 1761 (JSW)

13 This Document Relates to:

14 ALL ACTIONS

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28 **STIPULATION AND [PROPOSED] ORDER FOR SECOND AMENDMENT TO CASE MANAGEMENT ORDER NO. 2 TO EXTEND CASE SCHEDULE**

Hon. Jeffrey S. White

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15 **STIPULATION AND [PROPOSED] ORDER**

16 1. On October 27, 2006, the Court held an initial case management conference  
17 pursuant to Local Rule 16-10(a) and Federal Rule 16. As a result of that conference, the Court  
18 entered Stipulated Case Management Order (“CMO”) No. 2 on November 1, 2006.

19 2. On June 26, 2007, the Direct and Indirect Purchaser Plaintiffs each filed motions  
20 for class certification, with supporting expert declarations. Approximately one month later, on  
21 July 27, 2007, Direct Purchaser Plaintiff provided the supporting data for its expert's declaration.  
22 Defendants' opposition briefs to the Plaintiffs' class certification motions are currently due on  
23 September 25, 2007.

24 3. Discovery has been proceeding on all issues. In response to document requests  
25 served by the Indirect Purchaser Plaintiffs in December of 2006 and by the Direct Purchaser  
26 Plaintiffs in February of 2007, Alza has produced over 530,000 pages of documents. Alza began  
27 rolling its production of documents in March of 2007 and completed its production this month.  
28 Other J&J entities, in response to third-party subpoenas, have produced an additional 250,000

1 pages of documents. The parties have begun to set Rule 30(b)(6) depositions, the first of which  
2 are going to take place in late September.

3       4. Defendants served document requests on the Direct and Indirect Purchasers in  
4 January of 2007. In response, Indirect Purchasers began producing documents in late July of  
5 2007. Direct Purchasers have, to date, not yet produced any documents. Moreover, a dispute  
6 has arisen between Defendants and Direct Purchasers because Direct Purchasers have refused to  
7 give Defendants certain documents to which Defendants believe they are entitled. Direct  
8 Purchasers and Defendants will be filing motions with Magistrate Judge Laporte to resolve their  
9 dispute.

10       5.     The schedule originally contemplated by the parties assumed that the Defendants  
11 would have several months to analyze the documents, data, and expert reports provided by  
12 Plaintiffs relating to class certification issues, as well as take depositions of the Plaintiffs, in  
13 advance of the deadline for class certification oppositions. Given the realities of the Plaintiffs'  
14 documents productions and disclosure of expert data, Defendant's document production, the  
15 timing of the initial Rule 30(b)(6) depositions, and the pending dispute regarding the scope of the  
16 Direct Purchaser Plaintiff's discovery obligations, the current schedule does not allow  
17 Defendants the time contemplated to prepare their briefs and expert reports in opposition to the  
18 pending class certification motions nor does it allow Plaintiffs the time contemplated for  
19 completion of depositions.. For that reason, the parties seek an extension of the case schedule.

20       6. The parties have agreed and hereby stipulate (subject to the Court's order  
21 allowing them to do so) that Defendants be granted a 60-day extension of time, until November  
22 27, 2007, to file their oppositions to Plaintiffs' motion for class certification. In addition, the  
23 parties have agreed that the remaining dates and deadlines established by CMO No. 2 shall  
24 likewise be extended by approximately 60 days (with the exception of the deadline for written  
25 discovery relating to the issues set forth in Paragraph 3(b)-(d) of Case Management Order #2, as  
26 discussed in Paragraph 8 below). Specifically, the parties stipulate to the following amendments  
27 to CMO No. 2:

		<u>CMO No. 2</u>	<u>Amendment #1</u>	<u>Amendment #2</u>
1	Motion For Class Certification and Expert Reports in Support of Class Certification	Deadline for Defendants to depose Plaintiffs' experts, respond to motion, and file their expert reports:	July 27, 2007	Sept. 25, 2007
2		Deadline for Plaintiffs to depose Defendants' experts and file reply:	Aug. 24, 2007	Oct. 23, 2007
3		Hearing:	Sept. 14, 2007	Nov. 16, 2007
4				Jan. 11, 2008 <del>TBD by Court</del>
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12	Motion For Summary Judgment or Partial Summary Judgment Regarding Issues in Paragraphs 3(b) through 3(d) of CMO No. 2 and Expert Reports in Support of Summary Judgment	Opening Motion and supporting expert reports:	Oct. 12, 2007	Dec. 11, 2007
13		Cross Motion and Opposition Motion and supporting expert reports:	Nov. 21, 2007	Jan. 18, 2008
14				Mar. 20, 2008
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27	Completion of Discovery Relating to	Direct Purchaser will complete its document	N/A	N/A
28				Aug. 31, 2007

		<u>CMO No. 2</u>	<u>Amendment #1</u>	<u>Amendment #2</u>
Specific Issues in CMO No. 2	production			
	Paragraph 3(a):	July 13, 2007	Sept. 11, 2007	Nov. 9, 2007
	Paragraphs 3(b)-(d) – Written Discovery	Sept. 28, 2007	Nov. 16, 2007	Nov. 16, 2007
	Paragraphs 3(b)-(d) – Depositions	Sept. 28, 2007	Nov. 16, 2007	Jan. 25, 2007

7. Defendants specifically note that they may be forced to move for an additional extension of time with respect to their opposition to the Direct Purchaser Plaintiff's motion for class certification if the Direct Purchaser Plaintiff does not produce its documents by August 31, 2007, and depending upon the timing of the resolution of the outstanding discovery disputes between Defendants and Direct Purchaser Plaintiff and the consequent production of any disputed materials (if the Court orders the production of such materials). Defendants and Direct Purchaser Plaintiff have stipulated to an expedited schedule for briefing the discovery disputes to Magistrate Judge Laporte.

8. As the schedule above indicates, the deadline for written discovery on the specific issues listed in Paragraphs 3(b)-(d) of Case Management Order #2 is not being extended. The parties specifically understand that, consistent with Local Rule 26-2, all written discovery (including requests for production of documents, interrogatories, and requests for admission, as well as third-party document subpoenas) relating to the issues set forth in Paragraphs 3(b)-(d) must be served in sufficient time that responses will fall due on or before November 16, 2007. The parties further understand that, also consistent with Local Rule 26-2, any motions to compel based upon written discovery responses relating to the issues set forth in Paragraphs 3(b)-(d) must be brought within seven court days of November 16, 2007. Parties may take additional discovery pertaining to the issues set forth in Paragraphs 3(b)-(d) of CMO #2 only upon a showing of good cause – for example, if a party learns of an issue for the first time through depositions occurring after November 16, 2007, and the issue was not reasonably foreseeable

1 prior to that time. Nothing in this agreement, however, shall modify any party's ordinary duty to  
2 supplement its discovery responses under Federal Rule of Civil Procedure 26(e).

3 9. Nothing in this Stipulation alters or modifies any provision in CMO No. 2 except  
4 as specifically set forth in this Stipulation.

5 10. This stipulation for an extension of time has been brought in good faith and not  
6 for purposes of undue delay or harassment, and conforms with the requirements of Local Rules  
7 6-2, 7-12, and 16-2(d), and with Federal Rule 16(b), which requires "a showing of good cause"  
8 for the modification of a scheduling order. Fed. R. Civ. P. 16(b).

9 11. Pursuant to Local Rule 16-2(d), counsel for Direct Purchaser Plaintiff (Debra  
10 Gaw and Ed Notargiacomo), counsel for Indirect Purchaser Plaintiffs (Jason Thompson), and  
11 counsel for Defendants (M. Sean Royall) consulted about the positions set forth in this  
12 Stipulation and Proposed Order. All parties have agreed to this Stipulation.

13 IT IS HEREBY STIPULATED by and between the parties through their designated  
14 counsel that the Defendants shall have until November 27, 2007 to file their opposition to the  
15 Plaintiffs' motions for class certification in this matter and that all deadlines contained in the  
16 Stipulated Case Management Order No. 2 (except the deadline for the completion of written  
17 discovery relating to the issues set forth in Paragraph 3(b)-(d) of that Order) be extended by the  
18 approximately 60 days, as specified in Paragraph 6 above.

19 **STIPULATED AND AGREED TO BY:**

20 DATED: August 27, 2007

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18 DATED: August 27, 2007

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2 DATED: August 27, 2007

3 /s/ Michael A. Sitzman

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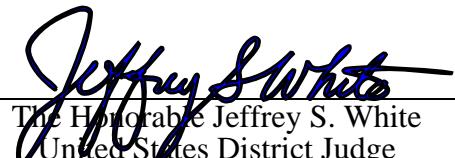
11 *Attorneys for Defendants Alza Corporation and*  
12 *Johnson & Johnson*

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14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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16 Dated: August 28, 2007

17   
18 The Honorable Jeffrey S. White  
19 United States District Judge

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